

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO:

State of Montana v. Abbott Labs Inc., et al.,
02-CV-12084-PBS

State of Nevada v. American Home Prods.
Corp., et al., D. Nev. Cause No. CV-N-02-0202-
ECR

MDL NO. 1456

CIVIL ACTION NO. 01-CV-12257-PBS

Judge Patti B. Saris

**DEFENDANT IMMUNEX CORPORATION'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Defendant Immunex Corporation (“Immunex”) respectfully moves this Court to grant summary judgment in favor of Immunex as to all claims. The grounds for this motion are set forth in Defendant Immunex Corporation’s Individual Memorandum of Law in Support of Summary Judgment Against the States of Nevada and Montana.

In support of its motion, Immunex submits herewith: (i) Immunex’s Memorandum of Law in Support of Its Motion for Summary Judgment; (ii) Immunex’s Local Rule 56.1 Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment; and (iii) Declaration of Charles C. Sipos in Support of Immunex’s Motion for Summary Judgment. Immunex also relies on the Local Rule 56.1 Statements of Undisputed Material Facts in Support of Defendants’ Joint Motions for Summary Judgment in the Montana and Nevada actions.

WHEREFORE, Immunex respectfully requests that the motion for summary judgment be GRANTED.

REQUEST FOR ORAL ARGUMENT

Pursuant to LR 7.1, Immunex believes that oral argument may assist the Court in resolving the issues presented in this motion and respectfully requests that oral argument be heard.

Respectfully submitted,

s/ Kathleen M. O'Sullivan

David J. Burman
Kathleen M. O'Sullivan
Charles C. Sipos
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000

Thomas J. Sartory
GOULSTON & STORRS LLP
400 Atlantic Avenue
Boston, MA 02110-3333
Telephone: (617) 482-1776
Facsimile: (617) 574-4112

Attorneys for Defendant Immunex Corporation

Dated: February 8, 2007

CERTIFICATE OF COMPLIANCE WITH LR 7.1

I hereby certify that counsel for Immunex Corporation conferred with counsel for Plaintiff State of Montana and Nevada on February 7, 2007, in a good faith effort to resolve or narrow the issues set forth herein, and counsel to the Plaintiffs indicated that Plaintiffs do not assent to this motion.

s/ Kathleen M. O'Sullivan

Kathleen M. O'Sullivan

CERTIFICATE OF SERVICE

I, Kathleen M. O'Sullivan, hereby certify that a true copy of the foregoing document was served upon all counsel of record in the Montana and Nevada actions electronically pursuant to Fed. R. Civ. P. 5(b)(2)(D) and CMO No. 2 on this 8th day of February, 2007, by causing a copy to be sent to LexisNexis File & Serve for posting and notification to all counsel of record.

s/ Kathleen M. O'Sullivan

Kathleen M. O'Sullivan